

The complaint

Miss G complains that a car supplied to her under a contract hire agreement with BMW Financial Services Limited GB (BMWFS) is of unsatisfactory quality.

What happened

In January 2022 Miss G entered into a contract hire agreement with BMWFS to hire a brand-new car. Miss G paid £5,602.00 in total towards advance rental payments, with the contract showing this was to be followed by 47 monthly payments of £374.13.

Miss G states she encountered several issues with the car. The car was first seen by the dealership in January 2023 where they found that the front brake pads were around 90% worn, and listed these as needing immediate replacement, with the rear brake pads listed at around 75% wear with replacement advised. The brake pads were not replaced at this point. The car was next seen by the dealership in February 2023. This appears to have been following a tyre issue described as a blow-out by Miss G, where the dealership listed a near-side front tyre was replaced alongside wheel balancing. During this, the dealership reported the brake pads as around 90% worn at the front and around 65% worn at the back. The mileage was recorded at 10,033.

Miss G then states the brake pads were replaced in April 2023 by another garage. Following this Miss G said there were more services booked in for June 2023 and August 2023. When the car was seen by the dealership again in August 2023, the brake pads were listed on a health check form as around 70% worn at the front and around 55% worn at the back. Alongside the brake pad wear issues and the tyre blow-out, Miss G said she had problems with the steering alignment, meaning the car would veer to the left without any input from the driver, mentioned further tyre related issues and that a garage added weights to the rear wheels to help with the alignment before the blow-out.

In February 2024 Miss G had the car seen to by another garage which I'll refer to as 'B', to get a final report on the car. Miss G said she stopped using it in September 2023 due to safety concerns following all the issues she'd encountered. B gave Miss G written information suggesting some of the brake discs have become corroded and a front calliper had seized making the car unsafe to drive. This also stated this means the vehicle moves to the right with the wheel unaligned.

Miss G complained to BMWFS about the issues she was facing in October 2017. In December 2023 Miss G brought her complaint to this service for investigation. And in February 2024 BMWFS issued their final response in which it didn't uphold Miss G's complaint. It said that the faults reported were considered to be wear and tear items, and that there was no evidence to show any faults were present or developing at the point of sale.

The complaint was passed to one of our investigators to look into. Miss G also explained to the investigator she was unhappy with the way her complaint had been handled by BMWFS,

that they'd given confusing information leading her to taking on another finance agreement, adding to the stress and worry of the situation.

The investigator didn't uphold the complaint. She said that the brake pad wear was likely due to wear and tear, and not a fault with the car, she didn't think the tyre blow-out was due to a pre-existing fault with the tyre and that there was no evidence to suggest the most recently reported faults with the brake disc corrosion and the callipers were present or developing at the point of supply of the car. The investigator also mentioned the options presented by BMWFS for Miss G to exit the agreement and acknowledged her unhappiness with how BMWFS had handled her complaint.

Miss G didn't agree with the outcome, so I've been asked to review the complaint to make a final decision.

As a note – I can't see that BMWFS have had the opportunity to respond to Miss G's unhappiness with the way they dealt with her complaint, or the options presented to her to exit the hire agreement.

Miss G has raised concerns about the way BMWFS have handled the complaint against them. Complaint handling isn't a regulated activity in its own right. Nor is it one of the specified non-regulated activities that I'm able to deal with under our compulsory jurisdiction (DISP Rule 2.3.1R). And so, I'm unable to look into the specifics of this.

However, in relation to the options presented to Miss G to exit the hire agreement. This would need to be raised separately with BMWFS, and they would need to respond within the timeframe allowed. Because BMWFS haven't had this opportunity to provide a response, I will not be making a finding on this issue in my decision, although I acknowledge what Miss G has said about how difficult things became for her as she has supplied detailed comments on these issues.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Miss G hired a car under a contract hire agreement. Entering into consumer credit contracts like this is a regulated activity, so I'm satisfied we can consider Miss G's complaint about BMWFS. BMWFS is also the supplier of the goods under this type of agreement meaning they are responsible for a complaint about the supply of the car and its quality.

The Consumer Rights Act 2015 (CRA) is relevant in this case. It says that under a contract to supply goods, there is an implied term that "*the quality of the goods is satisfactory, fit for purpose and as described*". To be considered as satisfactory, the CRA says the goods need to meet the standard that a reasonable person would consider satisfactory, considering any description of the goods, the price and all the other relevant circumstances. The CRA also explains the durability of goods is part of satisfactory quality.

So, it seems likely that in a case involving a car, the other relevant circumstances a court would consider might include things like the age and mileage at the time of sale and the vehicle's history.

In this case, Miss G hired a car that was brand-new. As this was a brand-new car, it's reasonable to expect the level of quality to be higher than a used, more road-worn car. It

would be reasonable to suggest Miss G would expect to be able to use this free from significant defects, for a considerable period of time.

I've reviewed the available evidence about the issues Miss G experienced with the car. Based on what I've seen, I'm satisfied that the brake pads needed changing, a tyre needed replacing and more recently the brake discs and callipers had issues. I say this because I've seen forms showing the brake pad wear alongside a tyre replacement and rebalancing. B has also confirmed in writing on a stamped invoice that some of the brake discs have significant corrosion and a front calliper has seized making the vehicle unsafe to drive. Given that some of the components needed replacing or could have been faulty, I've considered whether they were of satisfactory quality when Miss G acquired the car.

The first time the car was seen by the dealership since the sale was in January 2023. This was around one year later, with the mileage recorded as 9,013 on the health-check form. The dealership say this was booked in for an engine oil and microfilter service and the invoice shows this was carried out. During this, the mechanic reported the brake pads being worn to around 90% at the front with immediate replacement required, and around 75% worn at the back. These notes are listed on the health-check form alongside tyre checks showing no issues found.

The dealership say this is not unusual brake wear for the time and miles covered during ownership of the vehicle, and is dependent on the type of driving being undertaken. I acknowledge that Miss G may have expected the brake pads to last longer than the 9,013 miles recorded, but I don't have any evidence to show that the brakes had worn early due to a fault with the car that was present or developing at the point of supply. There is also nothing to say that these parts were not suitably durable, and the information I do have supports the opinion that wear and tear is the cause. This means I don't think this fault made the car of unsatisfactory quality, or that the parts were not suitably durable.

The next time the car was seen by the dealership was in February 2023. This was following what Miss G described as a tyre blow-out. Miss G stated she suffered a tyre blow-out in August 2023, but the information I have around these issues seems to relate to February 2023. The investigator also came to this conclusion in their view, and this timeline was not disputed as incorrect by Miss G. The information shows a near-side front tyre replacement and rebalancing, which seems reasonable after a tyre-related incident. The vehicle health-check form shows the brake pad wear at the front at around 90%, and the rear brake pads worn to around 65%. The form also shows there are no issues found with the tyres fitted to the car. There is an invoice showing brake pad replacement, however both Miss G and the dealership state the brake pads were not replaced in February 2023, so I'm satisfied this didn't go ahead.

A tyre failure can happen for a number of reasons from a fault with the tyre, the type of usage and driving and the surfaces driven on, to an accidental puncture or impact. I don't have any evidence to show that there was a problem that was present or developing at the point of sale with the tyre or anything that might have caused the failure. There is also no evidence to show the tyres were not suitably durable. The only information I have on the condition of the tyres is that they were checked in January 2023, and no issues were found with them, suggesting everything was normal. This doesn't guarantee that something may have been there to cause a failure, but I have no evidence to suggest this is the case. The information available persuades me that the tyre failure wasn't due to a fault present or developing at the point of sale, and that the tyres were suitably durable.

Miss G explained she had the brake pads replaced at a local garage in April 2023. I haven't seen any invoices or information to show this took place, however I have no reason to doubt that they were. This is supported by later evidence as the brake wear reported in August

2023 is less than it was in February 2023. I've seen some videos sent in by Miss G of the car at the roadside with a wheel removed at the back. One of them has a date underneath of April 2023. It's unclear what this relates to, and Miss G did say she'd send videos of the vehicle after a tyre blow-out that happened in August 2023. As this video is showing a different date, and doesn't show what the fault with the vehicle is it is difficult to use this as evidence for a particular fault. It also could be related to the brake pads needing to be replaced in April 2023.

Miss G stated the next service was booked to take place in June 2023 and supplied a reference number, however I have nothing to show what this was for, where it took place or the work that was carried out. As such I can't say what if any potential faults were presented or addressed.

The next time the dealership has a record of seeing the car was in August 2023. The dealership state this was to reset tyre pressures. During this, a health-check form was again completed, this time showing the mileage at 14,588 with the front brake pads showing around 70% wear with the rear brake pads worn to around 55%. The tyres are checked and recorded as showing no concerns on the form. Again, I acknowledge that Miss G may well have expected the brake pads to have lasted longer without showing this kind of wear. However, I have no evidence to show that this was caused by a fault with the car that was present or developing at the point of sale, or that they were not suitably durable.

Miss G has provided a written note on invoice paper displaying B's stamp dated in February 2024. I've outlined earlier in the decision what B found during this inspection. Miss G said she stopped using the vehicle in September 2023. With no evidence to prove otherwise, I find it reasonable to expect that prolonged lack of use could have caused the issues B found. B have not suggested that these issues were present or developing at the point of sale, or that the car was not suitably durable. These issues were not found or reported on at the services carried out by the dealership and the information around these issues persuades me that these have not occurred because the car had a fault that was present or developing at the point of sale, or that it wasn't suitably durable.

I fully recognise the way Miss G feels about the car and acknowledge that she felt unsafe driving it. Miss G explained she had alignment issues, problems with the rear tyres on four occasions and the need for 5 service visits in 16 months.

Miss G said that a garage had added weights to the rear wheels to help with the alignment, but the steering was still off. The only information I have around steering alignment, and this being either raised or addressed was at the February 2023 visit to the dealership where it is noted the tyres were rebalanced following replacement. Because I don't have evidence to show the alignment was a fault present or developing at the point of sale, I'm not persuaded this made the car of unsatisfactory quality.

I have on record the three times the dealership saw the car, and these appear to be related to the regular upkeep of the car as required, which I don't think is unreasonable to expect this level of maintenance. The outlier looks to be the February 2023 visit to do with the tyre replacement, and the April 2023 visit to a local garage to have the brake pads replaced. I have considered that the brake pads were reported on in January 2023, and could have been replaced during this instance or the February 2023 visit. I don't think the fact they were replaced in a separate visit in April 2023 makes the car of unsatisfactory quality.

Having carefully considered all of the available information, I'm satisfied the car was of satisfactory quality and suitably durable when it was supplied.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 2 January 2025.

Jack Evans
Ombudsman